

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KEVIN J. YALE,)	8:08CV50
)	
Petitioner,)	
)	
v.)	MEMORANDUM
)	AND ORDER
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

This matter is before the court for initial review of Petitioner Kevin J. Yale's Petition for Writ of Habeas Corpus ("Petition"). (Filing No. 1.) Petitioner has been given leave to proceed in forma pauperis.

Petitioner seeks relief from a federal criminal conviction pursuant to 28 U.S.C. § 2241. However, claims brought pursuant to 28 U.S.C. § 2241 may only be brought "in the district in which [the prisoner] is confined." *United States v. Leath*, 711 F.2d 119, 120 (8th Cir. 1983) (dismissing case for lack of jurisdiction under 28 U.S.C. § 2241). Petitioner is presently confined in a federal facility in Florence, Colorado. (Filing No. 1 at CM/ECF p. 1.) This court therefore lacks jurisdiction and this matter must be dismissed without prejudice to reassertion in the jurisdiction in which Petitioner is confined.

However, Plaintiff was convicted and sentenced in the United States District Court for the District of Nebraska. (*See* Case No. 8:05CR191.) Thus, Petitioner may have intended to pursue his claims as a motion brought pursuant to 28 U.S.C. § 2255. Rather than simply recharacterize the Petition as a motion under 28 U.S.C. § 2255, the court "must notify the pro se litigant that it intends to recharacterize the pleading, warn the litigant that this recharacterization means that any subsequent § 2255 motion will be subject to the restrictions on 'second or successive' motions, and provide the

litigant an opportunity to withdraw the motion or to amend it so that it contains all the § 2255 claims he believes he has.” *Castro v. United States*, 540 U.S. 375, 382 (2003). Petitioner is so warned.

IT IS THEREFORE ORDERED that:

1. Petitioner shall have until May 23, 2008 in which to inform the court regarding whether he wishes to treat his Petition as a motion brought pursuant to 28 U.S.C. § 2255. If Petitioner requests that the court recharacterize his Petition as a motion brought under 28 U.S.C. § 2255, he should also indicate whether he would like to amend his Petition to contain all § 2255 claims.

2. In the absence of a response by Petitioner in accordance with this Memorandum and Order, this matter will be dismissed without prejudice to reassertion in the jurisdiction in which Petitioner is confined.

3. The Clerk of the court is directed to set a pro se case management deadline with the following text: May 23, 2008: Check for Petitioner’s response regarding conversion to 2255 and dismiss case if none filed.

April 23, 2008.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge